

THIS DISPOSITION IS
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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Storopack Hans Reichenecker GmbH & Co.

Serial No. 74/379,085

Felix J. D'Ambrosio of Jones, Tullar & Cooper, P.C. for
Storopack Hans Reichenecker GmbH & Co.

Andrew D. Lawrence, Trademark Examining Attorney, Law Office
108 (David Shallant, Managing Attorney)

Before Sams, Simms and Quinn, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Storopack Hans Reichenecker GmbH & Co. (applicant), a
German corporation, has appealed from the final refusal of
the Trademark Examining Attorney to register the mark
PAPERFILL for pourable packaging materials for use in
shipping goods.¹ The Examining Attorney has refused

¹ Application Serial No. 74/379,085, originally filed April 15,
1993, based upon an application filed in the Federal Republic of
Germany on October 15, 1992. On July 27, 1995, applicant changed
the basis of its application from Section 44(d), 15 USC §1126(d),

registration under Section 2(e)(1) of the Act, 15 USC §1052(e)(1), arguing that applicant's mark is merely descriptive of its goods. Applicant and the Examining Attorney have submitted briefs but no oral hearing was requested.

We affirm.

Relying upon a definition of the word "fill" ("a material used to fill a receptacle, cavity, or passage"), and upon copies of articles obtained from the Nexis database, the Examining Attorney argues that, in the packaging business, a fill is known by its composition. Fill is poured directly into shipping containers and is designed to cushion the goods being shipped from whatever shocks the container may encounter during shipping. Some excerpts from the articles made of record are set forth below:

...In 1989, customers were complaining about plastic "peanuts" used in mail order shipments. A study of plastic vs. paper fills found that plastic cushioned better and weighed less...

DM News, December 27, 1993

* * * * *

A machine patented by Patriot Packaging produces coiled paper pellets for use as a loose packaging fill...

to Section 1(b) of the Act, 15 USC §1051(b) (bona fide intent to use the mark in commerce).

Crains Cleveland Business, November 15,
1993

* * * * *

"Ultimately, we're trying to close the loop on paper by recycling mixed mail, educating our customers and using our own internal paper trimmings as packaging fill instead of polystyrene peanuts..."

Business & the Environment, April 1992

The Examining Attorney notes that applicant has indicated that its fill could be made of paper and, in fact, applicant has submitted samples of its goods, some of which are made of paper. Thus, it is the Examining Attorney's position that fill made of paper may be called paper fill.

Applicant's mark PAPERFILL, according to the Examining Attorney, immediately tells prospective purchaser what applicant's goods are.

Applicant argues that the words "paper" and "fill" describe something about the goods but they do not describe the goods themselves. Applicant's Response, filed September 30, 1994, 2. See also applicant's brief, 2. Essentially, it is applicant's position that the asserted mark is suggestive because the information about applicant's goods suggested by the mark is indirect or vague. While applicant admits that its goods are called "loose fill," applicant argues that in the trade packaging fill is primarily made of thermoplastic rather than paper. Applicant also states that

it is not aware of any competitor using this mark for its goods.

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that the asserted mark is merely descriptive. It immediately tells prospective purchasers that applicant's fill is made of paper. These highly descriptive words are unregistrable under Section 2(e)(1) of the Act.

Decision: The refusal of registration is affirmed.

J. D. Sams

R. L. Simms

T. J. Quinn
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

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